

January 09, 2007

RE: Effects of Communications Tower on Migratory Birds WT Docket No. 03-187

Dear Jeffrey Steinberg – Deputy Chief, Spectrum & Compensation Policy Division:

The Eastern Band of Cherokee Indians Tribal Historic Preservation Office would like to make these comments to the Migratory Birds Notice of Proposed Rule Making (Migratory Bird NPRM).

In reading the comments of the Avatar and their knowledge and recommendations to the reasons of loss to the migratory birds should warrant enough concern that the Federal Communications Commission (FCC) would place great diligence to amending the NPRM. Any implementing changes to our environment should be recognized and noted that many tribes give significance to birds through many aspects of their own life. The United States Fish and Wildlife Service (USFWS) is the federal governmental agency who oversees wildlife and would be the best communicator to the numbers lost of migratory birds. The American Bird Conservancy, Forest Conservation Council, Human Society and Defender of Wildlife agree to the losses that our environment is experiencing do to the height of towers, lighting and placement of towers including the flight path of migratory birds. Their comments create justification for actions by FCC. FCC is the lead agency to who should be placing changes to protect the species being endanger as they are the permitting licensee for tower construction. Continued studies are being requested please note as one can make many studies but if change never comes about awaiting determination for a study soon there will be nothing to study. We will have lost as native people our messengers of importance to our traditional and spiritual connection.

To comment on the topic “III. Discussion,” yes this discussion warrants regulations specifically on design and should be looked at to protect migratory bird flight as well birds. By following the USFWS recommendation as they have the evidence as the lead governmental agency in these matters of the numerous birds that are being lost to cell towers should be significant enough and reason enough to listen and create changes in the a NPRM. When looking to comment on the legal matters of the framework is not the FCC the governmental agency who should be protecting if you are the ones giving the license? Are you not the one who has obligated the permits and giving authorization for the construction of over 104,703 cell towers antenna structures to be registered with the Commission since

November 2006? Why is it that co-locating to existing power lines is not more prevalent as they stretch all across the landscape? And once again yes an “additional criterion for requiring and EA to Section 1.1307(a) of our rules” should be mandated and penalties should be put in place in writing for all to except those decisions made by a lead federal governmental office that oversees communications.

What is ones legal framework when analyzing the impact of “human environment?” Does FCC mandate that the carriers truly look into the “natural and physical environment and the relationship of people with that environment?” If the commission is truly interested in implementing what is the people’s environment the towers would not be build in family community neighborhoods, near water avenues, or in the flight pattern of where migratory concerns and habitat is prominent. Links to co-locate would be the number one mandate where these interest lie to “human environment.”

Once again FCC is the permitting licensee for cell tower antenna construction. It is well known that FCC does not construct the tower but by being the federal agency does it not support the links to construction? Does FCC not have the responsibility and legal obligation to over see what “triggers” changes in the classification to the “human environment” and the “natural and physical environment and the relationship of people with that environment?”

It has been noted at one time thirteen clans existed within the Cherokee Tribe but do to the multiple environmental changes there are seven clans prominently known today. When man changes our environment we lose viable links and if the Cherokee Bird Clan losses its availability to call upon certain birds we will lose one more important link to our cultures spiritual history and way of life. The Bird Clan People are keepers of the birds and the Cherokee people are very aware of the birds which are messengers and what each bird brings to them. Clans are important for many reasons historically and after many generations these clans persist to acknowledge who they belong to and why. It is believed there are numerous birds who not only are the messenger between the people and the creator but assist in many prayers. If we continue to lose the links to these birds then the massage will be lost and a clanship will suffer. What has been depleted from our environment and the drastic changes we live in today will eventually show the effects not only to the Cherokee but many tribes who co-exist in this mass region. Bird migration was created for a reason the birds are apart of our environmental belief system, they are part of a strong spiritual reasons why native people have bird clans as we should not separate the land from the water or those from the sky. These small marvels of flight in our world were given to us for a reason. FCC could make the correct changes before it

is all gone and truly stand for what “natural and physical environment and the relationship of people with that environment” means. Have you taken the time to listen to bird sing or wonder why one small bird will chirp when you are around, have you ever watched the patterns birds make when feeding and protecting each other. Do you know how to call upon a certain bird that carries medicinal spiritual powers unknown to many individuals? Native people who have been taught these practices are very aware of what will be lost if we continue to lose the numbers of birds that are being killed. Cherokee as well many other tribes have significant attachment believe systems with many animals on the ground those in flight have been recognized to have more significance as they reach closest to the heavens than most creatures are permitted to do so. The numbers being documented to the warblers, and thrushes as well vireos is enormous and measures to protect should be made sooner than later.

USFWS stipulates “it is unlawful to “pursue, hunt, take, capture, kill, attempt to take, capture or kill...any migratory bird unless permitted by FWS. It is good to see the FCC is not clear about the statements actions where FCC is contributing to the deaths of millions of migratory birds which have specific consequences on the Eastern Band of Cherokee Indians “human environment” and “spiritual belief system.” This alone will hopefully open more communications and sooner. In the readings of the Migratory Bird Matter it is noted that the warblers and thrush birds are being lost in numerous counts we have to wonder what other species are being lost to the obscurities of cell tower structures and what will truly fix this concern. These birds mentioned are messengers of the Cherokee and have been listened to longer than any other communications efforts known today. I alone could tell you many stories to when my mother in-law knew I was coming home without even calling her on the telephone or when something was going to happen or how to reach a destiny sooner than later by the powers of the song birds that are being lost.

To make comment on the cost is truly out of our realm to address, we do feel that it is important enough to address that no matter the cost avenues should be made to change lighting, design, and placement before five years and we do understand that relevance to time will only permit more loss of a cultures belief system and use of the migratory birds. Guy wire towers would seem to cause a greater loss as well the height of towers would seem to be reasons to change the ruling. The USFWS have studied these losses for several years and there recommendations are warranted for implementation. It is well known that the Cherokee Aboriginal Territory lies in a predominate forest and mountain region and as these land are becoming ever so limited with lush forestry and water for habitation as well larger animals that will seek the falling bird for food, numbers will be limited to count, so yes

collocation requirements should be promoted. The scientific evidence seems to have been noted if a count into the millions have be documented. The question is how soon will FCC enact on changes to the NPRM and what avenues will be made for those towers already in existence?

We want to thank FCC for allowing our office the Eastern Band of Cherokee Indians Tribal Historic Preservation Office the opportunity to address this concern as it is very important to the intact of a clanship society as warblers, thrush and vireo birds are being documented at such a high number and killed by cell tower construction. If I may in the reading of THE LAND LOOKS AFTER US there is a section on Traditions and Crisis in the Eastern Woodland the writing tells about a young boy wanting to supply is grandmother with plenty of fish so she would have plenty to eat, she scolds the boy in telling him, “you have not done well as all the fish will be annihilated, so the boy opened the trap releasing the surplus fish.” The message is very clear and direct, “if you care about the future, do not be greedy with nature.” Thank you for looking into the concerns that will hopefully be a positive effort by the lead federal agency the Federal Communications Commission.

In my final comment yes the FCC has an obligation to protect our environment as you are the link to construction of cell towers as this is all our environment and as the discussions on migratory birds is what we believe and live that grounds us to our past, present and future as native people we are requesting changes to the Migratory Bird Notice of Proposed Rule Making.

Thank you for the opportunity and time in this very important matter.

Sincerely,

Lora Kay Oxendine – Taylor  
Eastern Band of Cherokee Indians Tribal Historic Preservation Office